

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 14th day of February, two thousand twelve.

PRESENT:

JOSÉ A. CABRANES,
PETER W. HALL,
GERARD E. LYNCH,
Circuit Judges.

ADAMA MUSSA SILA,
Petitioner,

v.

04-2953-ag
NAC

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,^{*}
Respondent.

FOR PETITIONER: Thomas V. Massucci, New York, New York.

^{*} Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Eric H. Holder, Jr. is substituted for John Ashcroft as Respondent.

1 **FOR RESPONDENT:** Preet Bharara, United States
2 Attorney; Sue Chen, Special
3 Assistant United States Attorney;
4 Sarah S. Normand, Assistant United
5 States Attorney, United States
6 Attorney's Office for the Southern
7 District of New York, New York, New
8 York.
9

10 UPON DUE CONSIDERATION of this petition for review of a
11 Board of Immigration Appeals ("BIA") decision, it is hereby
12 ORDERED, ADJUDGED, AND DECREED that the petition for review
13 is DENIED.

14 Adama Mussa Sila, a native and citizen of Guinea-
15 Bissau, seeks review of a May 4, 2004, order of the BIA
16 affirming the December 31, 2002, decision of Immigration
17 Judge ("IJ") Victoria Gharthey, which denied his applications
18 for asylum, withholding of removal, and relief under the
19 Convention Against Torture ("CAT"). *In re Adama Mussa Sila*,
20 No. A078 731 083 (B.I.A. May 4, 2004), *aff'g* No. A078 731
21 083 (Immig. Ct. N.Y. City Dec. 31, 2002). We assume the
22 parties' familiarity with the underlying facts and
23 procedural history in this case.

24 Under the circumstances of this case, we have reviewed
25 the IJ's decision as the final agency decision. *See Mei*
26 *Chai Ye v. U.S. Dep't of Justice*, 489 F.3d 517, 523 (2d Cir.
27 2007). The applicable standards of review are
28 wellestablished. *See Bah v. Mukasey*, 529 F.3d 99, 110 (2d

1 Cir. 2008); *Shu Wen Sun v. BIA*, 510 F.3d 377, 379 (2d Cir.
2 2007)).

3 The agency's adverse credibility determination is
4 supported by substantial evidence. In finding Sila not
5 credible, the agency reasonably relied in part on
6 inconsistencies among his asylum application, supporting
7 affidavit, and hearing testimony before the IJ. See
8 *Secaida-Rosales v. INS*, 331 F.3d 297, 308-09 (2d Cir.
9 2003).¹ First, Sila's asylum application, affidavit, and
10 testimony contained inconsistent statements regarding when
11 and how he learned of his father's death. When Sila was
12 asked to explain the inconsistencies between his application
13 and his testimony, he faulted the person who had prepared
14 his application and contended that his affidavit had been
15 submitted to correct the record. Given that Sila's
16 affidavit contained additional material deviations from his
17 testimony and further undermined his credibility, the agency
18 was not required to credit his explanation. See *Majidi v.*
19 *Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005). Further,

¹In *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008), we recognized that the REAL ID Act abrogated in part the holding in *Secaida-Rosales* for cases filed after May 11, 2005, the effective date of the Act. *Id.* Because Sila's application was filed before this date, *Secaida-Rosales* remains good law. See *Zheng v. Mukasey*, 552 F.3d 277, 287 n.6 (2d Cir. 2009).

1 because these inconsistencies go to the heart of Sila's
2 claim of past persecution, i.e., his father's death and the
3 rape of his family members, and related to an event of major
4 importance cited in support of his asylum application, the
5 agency reasonably concluded that Sila's inconsistent
6 statements were sufficient to support an adverse credibility
7 determination. *See Zhou Yun Zhang v. INS*, 386 F.3d 66, 77
8 (2d Cir. 2004) (noting that date inconsistencies relating to
9 when petitioner learned of "distressing information" are
10 "not the sort of 'minor and isolated' discrepancies so
11 plainly immaterial" to an asylum claim), *overruled on other*
12 *grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d
13 296 (2d Cir. 2007) (en banc).

14 The agency's adverse credibility determination is
15 further supported by inconsistencies between Sila's
16 affidavit and his testimony regarding whether his cousin had
17 been raped. Despite Sila's arguments to the contrary, this
18 inconsistency supports the agency's adverse credibility
19 finding because, as noted above, the discrepancy goes to the
20 heart of Sila's claim of past persecution. *See Chen Yun Gao*
21 *v. Ashcroft*, 299 F.3d 266, 272 (2d Cir. 2002) (holding that
22 an IJ may base an adverse credibility determination on
23 discrepancies that go to the "heart of the asylum claim").

1 Ultimately, given the inconsistent statements Sila
2 provided regarding his father's death and the rape of his
3 cousin, the agency's adverse credibility determination was
4 supported by substantial evidence. *See Shu Wen Sun*, 510
5 F.3d at 379-80. Since the only evidence of a threat to
6 Sila's life or freedom depended upon his credibility, the
7 agency's adverse credibility determination was a proper
8 basis for the denial of asylum, withholding of removal, and
9 CAT relief. *See Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d
10 Cir. 2006).

11 For the foregoing reasons, the petition for review is
12 DENIED. As we have completed our review, any stay of
13 removal that the Court previously granted in this petition
14 is VACATED, and any pending motion for a stay of removal in
15 this petition is DISMISSED as moot. Any pending request for
16 oral argument in this petition is DENIED in accordance with
17 Federal Rule of Appellate Procedure 34(a)(2), and Second
18 Circuit Local Rule 34.1(b).

19 FOR THE COURT:
20 Catherine O'Hagan Wolfe, Clerk
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